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MEMORANDUM FOR: Director of Central Intelligence

SUBJECT : The Office of General Counsel

1. The Commission on CIA Activities Within the United States in their recent report made certain findings, conclusions and recommendations regarding the Office of General Counsel. These are reproduced in Appendix A, together with the Agency response thereto contained in the attachment to your letter to the President of 21 June 1975. I have studied how the current regulations direct my Office to participate in the Agency decisionmaking process, as well as how it should participate in the future. I have also given considerable study to the future organization and manpower needs of OGC, based on existing and projected workload requirements. Summaries of these examinations and studies are outlined below.

OGC Participation in Decisionmaking Process Based on Regulations

2. The Rockefeller Commission Report was critical of the Agency in that many of the specific activities discussed in that report were not brought to the attention of the General Counsel. There is no requirement in Agency regulations that this be done. The regulations do provide for consultation with the General Counsel in specified situations in about ten references in the regulations. One can ask whether there should be a requirement that any new activity or program must receive the prior concurrence of the General Counsel. On the other hand, the responsibility could simply be placed on the Deputy Directors to consult with the General Counsel on all matters which may have legal implications. There should be a basic decision as to the precise role to be played by the General Counsel and then a regulation drawn to implement that decision. One approach to establish this concept was taken in the proposed regulation entitled, "Restrictions on CIA Activities Within the United States or Related to U. S. Citizens and Organizations." That proposed regulation states that to ensure that Agency activities are in compliance with law, the Deputy Directors and Heads of Independent Offices shall consult with this Office on the legality of all activities unless the same has been clearly established. Agency regulations should also specify that any lawyer in the Agency assigned the responsibility of rendering legal opinions or performing a legal function must be assigned to OGC.

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3. Current Agency regulations prescribe the participation of OGC in the Agency regulatory process. As documented in some detail in Appendix B, OGC participates in the review of all Agency regulations and notices but does not generally participate in the review of the multitude of other regulatory issuances issued throughout the Agency. The study contained in Appendix B, which initially set out to examine the participation of OGC in the Agency regulatory process, could not avoid examining, in a broad sense, the Agency regulatory process. During this latter examination we found that certain shortcomings of the Agency regulatory process that were previously documented in an Inspector General study continue to exist. For this reason, as well as the fact that Agency regulations have the force and effect of law, we made a number of recommendations regarding modifications of the regulatory process of the Agency which are also set forth in Appendix B, in the form of a 10 September 1975 memorandum to the General Counsel from [redacted] OGC. I have forwarded this separately to the Deputy Director for Administration so that work may begin. In summary, I recommend that you rely on OGC to review all Agency regulatory materials for their legality in whatever form and that you endorse a review of the regulatory process as suggested in Appendix B.

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Organization and Resources for OGC

4. Although details have yet to be determined, I am of the view that the Office must be organized on a substantive basis. By this I mean that a number of substantive units would be created, each unit responsible for certain substantive fields the Office must deal with. In the past it has been the practice of the Office to try to avoid concentrating a particular area of our work in any one lawyer or group, but because of the greatly expanded workload, that practice cannot continue. My thinking as of now is that the workload would be divided into at least the four following areas:

a. freedom of information and privacy;

b. procurement and logistics;

c. general legal; and

d. management and operations support and Agency-wide legal matters, including legislative and Executive order review.

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It may be that experience with this breakdown of the work will require even further division. However, it is clear to me that the expanded work of this Office requires some division and specialization as well as a shifting and spreading of certain of my authorities and responsibilities to the senior members of this Office. Also in this regard, I am considering the establishment of an executive officer for the Office with the function of assisting me in the management of the Office to include more effective information control systems. I believe that OGC should be divided on a substantive basis as soon as possible and this is going forward. I have also initiated discussions with each of the four Deputies on the concept of assigning one attorney to each Directorate. There are many pros and cons to this idea and each such assignment would necessarily have to be tailored to meet the needs of the Directorate concerned. It may well be that the concept would only fit two or three of the Directorates.

5. As you know, a Department of Justice team recently conducted a survey of OGC in order to give me guidance as to future manpower needs. Reflected in this survey, which is at Appendix C, are some views on the organization of the Office. I do not agree one hundred percent with their various recommendations. In the main, however, on the key issues of organization, increase in the number of attorneys, and management assistance, I agree thoroughly. The statistics they were able to collect demonstrate dramatically workload increases. In one area, however, I believe that they have insufficiently taken into account the workload aspects of litigation. There are currently in the Office approximately 60 litigation matters. As each of these comes to the trial stage, massive amounts of lawyer time will be required. With the Freedom of Information Act permitting suits to be filed in the District of the plaintiff, this will involve us sending lawyers to the various parts of the country, again creating drains on lawyer time.

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6. [redacted] I have attempted to recruit in three different ways:

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a. from within the Agency;

b. one-year rotational tours from within the Agency [redacted] and

c. from outside the Agency, either with experience or directly out of law school.

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I will continue to apply a mix. One of the thoughts in mind here is that, if the workload tapers off, we can reduce personnel in the Office by the simple means of returning those concerned to their home component, plus attrition. I am very mindful of the Rockefeller Commission Report recommendation for continuing legal education, as well as the desirability of assigning our attorneys to other Government agencies or even private law firms. In recent times we simply have been unable to spare them. As to numbers, the Department of Justice survey recommended about [redacted] lawyers total. As indicated, I think they are under the mark. Allowing some leeway for external training or assignments and based on my judgment of a bulge when our litigation cases mature into trials, I would recommend a total of [redacted], of which about [redacted] I would propose be limited to rotational assignments at this time. This would also give me the leeway for assignment of lawyers to the Directorates. (All figures above do not reflect the [redacted] lawyers on detail to [redacted]

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The Position of General Counsel

7. When I testified before the Rockefeller Commission, Mr. Griswold queried me concerning the desirability of a Presidentially-appointed General Counsel. I listed for him the pros and cons, such as greater stature and possibly greater independence against detailed knowledge and career concepts. Obviously there are many other factors, but in my judgment I came down on the side of appointment by the Director, whether from within the Agency or otherwise. I believe the Director should have this personal freedom. Another matter I would like to suggest for consideration is at what level the General Counsel should be placed. In all cabinet departments, the General Counsel is at the same level as the principal "deputies," i.e., the Assistant Secretaries. I have not conducted an exhaustive examination of non-cabinet departments, but generally a similar pattern is discernible. Placement at a similar level within the Agency would be a demonstration of the Director's intent that the Agency is to be guided by the "rule of law."

[redacted]

JOHN S. WARNER
General Counsel

Attachments

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